

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Division hereby gives Notice of Intended Action to amend Chapter 10, “Enhanced 911 Telephone Systems,” Iowa Administrative Code.

These amendments are intended to implement 2012 Iowa Acts, Senate File 2332, passed by the 84th General Assembly and signed by the Governor on May 2, 2012. The legislation provides for changes to Iowa Code chapter 34A.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before January 2, 2013. Such written materials should be sent to the Administrative Rules Coordinator, Iowa Homeland Security and Emergency Management Division, 7105 NW 70th Avenue, Camp Dodge Building W-4, Johnston, Iowa 50131.

Also, there will be a public hearing on January 3, 2013, at 1 p.m. in the Homeland Security and Emergency Management Division Conference Room in Building W-4 at Camp Dodge, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Homeland Security and Emergency Management Division and advise of specific needs.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 34A.

The following amendments are proposed.

ITEM 1. Adopt the following new definitions in rule **605—10.2(34A)**:

“*Communications service*” means a service capable of accessing, connecting with, or interfacing with a 911 system by dialing, initializing, or otherwise activating the system exclusively through the digits 911 by means of a local telephone device or wireless communications device.

“*Communications service provider*” means a service provider, public or private, that transports information electronically via landline, wireless, internet, cable, or satellite, including but not limited to wireless communications service providers, personal communications service, telematics and voice over internet protocol.

“*Prepaid wireless telecommunications service*” means a wireless communications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance, and that is sold in predetermined units or dollars of which the amount declines with use in a known amount.

“*Telematics*” means a vehicle-based mobile data application which can automatically call for assistance if the vehicle is in an accident.

“*Voice over internet protocol*” means a technology used to transmit voice conversations over a data network such as a computer network or internet.

“*Wireless communications service provider*” means a company that offers wireless communications service to users of wireless devices including but not limited to cellular, personal communications services, mobile satellite services, and enhanced specialized mobile radio.

“Wire-line E911 service surcharge” means a charge set by the E911 service operating authority and assessed on each wire-line access line which physically terminates within the E911 service area in accordance with Iowa Code section 34A.7.

ITEM 2. Amend rule **605—10.2(34A)**, definition of “Wireless communications service,” as follows:

“Wireless communications service” means ~~cellular, broadband PCS, and SMR which provide real time two-way interconnected voice service, the networks of which utilize intelligent switching capability and offer seamless handoff to customers. This definition includes facilities-based service providers and non-facilities-based resellers. For purposes of wireless 911 surcharge, wireless communications service does not include services whose customers do not have access to 911, or a 911-like service, a communications channel utilized only for data transmission, or a private telecommunications system~~ commercial mobile radio service. “Wireless communications service” includes any wireless two-way communications used in cellular telephone service, personal communications service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network access line. “Wireless communications service” does not include a service whose customers do not have access to 911 or 911-like service, a communications channel utilized only for data transmission, or a private telecommunications system.

ITEM 3. Rescind the definitions of “Emergency 911 notification device” and “Local exchange service provider” in rule **605—10.2(34A)**.

ITEM 4. Amend paragraph **10.4(1)“a”** as follows:

a. The state homeland security and emergency management division.

ITEM 5. Amend paragraph **10.4(2)“j”** as follows:

j. Information from telephone communications service providers detailing the current equipment operated by the provider to provide telephone service and additional central office equipment or technology upgrades, or both, necessary to implement E911 service.

ITEM 6. Adopt the following new paragraph **10.4(2)“q”**:

q. A plan to migrate to an internet protocol-enabled next generation network.

ITEM 7. Amend rule 605—10.5(34A) as follows:

**605—10.5(34A) Referendum and wire-line E911 service surcharge (wire-line).**

**10.5(1)** and **10.5(2)** No change.

**10.5(3)** The E911 program manager shall notify a local ~~exchange~~ communications service provider scheduled to provide exchange access E911 service within an E911 service area that implementation of an E911 service plan has been approved by the joint E911 service board, by the E911 program manager, and by the service area referendum, and that collection of the surcharge is to begin within ~~100~~ 60 days. The E911 program manager shall also provide notice to all affected public safety answering points. The 60-day notice to local exchange service providers shall also apply when an adjustment in the wire-line surcharge rate is made.

**10.5(4)** The local ~~exchange~~ communications service provider shall collect the surcharge as a part of its monthly billing to its subscribers. The surcharge shall appear as a single line item on a subscriber’s monthly billing entitled “E911 emergency ~~telephone~~ communications service surcharge.”

**10.5(5)** The local ~~exchange~~ communications service provider may retain 1 percent of the surcharge collected as compensation for the billing and collection of the surcharge. If the compensation is insufficient to fully recover a provider’s costs for the billing and collection of the surcharge, the deficiency shall be included in the provider’s costs for rate-making purposes to the extent it is reasonable and just under Iowa Code section 476.6.

**10.5(6)** The local ~~exchange~~ communications service provider shall remit collected surcharge to the joint E911 service board on a calendar-quarter basis within 20 days of the end of the quarter.

**10.5(7)** The joint E911 service board may request, not more than once each quarter, the following information from the local ~~exchange~~ communications service provider:

*a.* to *e.* No change.

*f.* The amount retained by the local ~~exchange~~ communications service provider from the 1 percent administrative fee.

Access line counts and surcharge remittances are confidential public records as provided in Iowa Code section 34A.8.

**10.5(8)** Collection for a surcharge shall terminate if E911 service ceases to operate within the respective E911 service area. The E911 program manager for good cause may grant an extension.

*a.* The administrator shall provide 100 days' prior written notice to the joint E911 service board or the operating authority and to the local ~~exchange~~ communications service provider(s) collecting the fee of the termination of surcharge collection.

*b.* and *c.* No change.

ITEM 8. Amend rule 605—10.7(34A) as follows:

**605—10.7(34A) Enhanced wireless E911 service plan.** Each joint E911 service board, the department of public safety, the E911 communications council, and wireless service providers shall cooperate with the E911 program manager in preparing an enhanced wireless E911 service plan for statewide implementation of enhanced wireless E911 ~~phase I and phase II implementation~~ service.

**10.7(1) Plan specifications.** The enhanced wireless 911 service plan shall include, at a minimum, the following information:

1. Maps showing geographic area to be served by each PSAP receiving enhanced wireless E911 telephone calls.

2. A list of all public and private safety agencies within the enhanced wireless E911 service area.

3. The geographic location of each PSAP receiving enhanced wireless E911 calls and the name of the person responsible for the management of the PSAP.

4. A set of guidelines for determining eligible cost for ~~wireless service providers, wire-line service providers, and public safety answering points~~ as set forth in Iowa Code section 34A.7A.

5. ~~A statement of estimated charges for the implementation and operation of enhanced wireless 911 phase I and phase II service, detailing the equipment operated or needed to operate enhanced wireless 911 service, including any technology upgrades necessary to provide service. Charges must be directly attributable to the implementation and operation of enhanced wireless 911 service. Charges shall be detailed showing item(s) or unit(s) of cost, or both, and include estimated charges from:~~

● ~~Wireless service providers.~~

● ~~Wire-line service providers for implementation and operation of enhanced wireless 911 service.~~

● ~~Public safety answering points.~~

6. ~~5.~~ A schedule for the implementation ~~of~~ and maintenance of the next generation 911 systems to provide enhanced wireless 911 phase I and phase II service.

**10.7(2) Adoption by reference.** The “Wireless Enhanced 911 Implementation and Operation Plan,” effective ~~February 1, 2000~~ November 1, 2012, and available from the Homeland Security and Emergency Management Division, 7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston, Iowa, or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference ~~with the following changes effective May 8, 2002 [insert effective date] :~~ Section F, provide further clarification of eligible costs for public safety answering points and the Iowa department of public safety; Section G, provide further specification on the surplus payment process for local E911 service boards and the Iowa department of public safety; Attachment A, ensure that the application for surplus payments contains the language contained in Section G. Additional changes effective August 16, 2004: Sections A, D, E, I, J, K, and service area maps, update to reflect changes in the Code of Iowa and to represent the actual 911 operating conditions with the state; Sections F and G, provide further clarification of eligible costs and the payment of those costs.

ITEM 9. Amend rule 605—10.8(34A) as follows:

**605—10.8(34A) E911 Emergency communications service surcharge (wireless).**

**10.8(1)** The E911 program manager shall adopt a monthly surcharge of up to 65 cents to be imposed on each wireless communications service number provided in this state. The amount of wireless surcharge to be collected may be adjusted once yearly, but in no case shall the surcharge exceed 65 cents per month, per customer service number. The surcharge shall not be imposed on wire-line-based communications or prepaid wireless telecommunications service.

**10.8(2)** The amount of wireless surcharge to be collected during a fiscal year shall be determined by the administrator's best estimation of enhanced wireless 911 costs for the ensuing fiscal year. The E911 program manager shall base the estimated cost on information provided by the E911 communications council, wireless service providers, vendors, public safety agencies, joint E911 service boards and any other appropriate parties or agencies involved in the provision or operation of enhanced wireless 911 service. The E911 communications council shall also provide a recommended monthly wireless surcharge for the ensuing fiscal year.

**10.8(3)** The E911 program manager shall order the imposition of surcharge uniformly on a statewide basis and simultaneously on all ~~wireless~~ communications service numbers by giving at least ~~100~~ 60 days' prior notice to wireless carriers to impose a monthly surcharge as part of their periodic billings. The ~~100~~ 60-day notice to wireless carriers shall also apply when making an adjustment in the wireless surcharge rate.

**10.8(4)** The wireless surcharge shall be 65 cents per month, per customer service number until changed by rule.

**10.8(5)** The ~~wireless~~ communications service provider shall list the surcharge as a separate line item on the customer's billing indicating that the surcharge is for E911 emergency telephone service. The communications service provider is entitled to retain 1 percent of any wireless surcharge collected as a fee for collecting the surcharge as part of the subscriber's periodic billing. The wireless E911 surcharge is not subject to sales or use tax. In the case of prepaid wireless service, this surcharge shall be collected under one of two methods:

*a.* ~~The wireless service provider shall collect, on a monthly basis, the surcharge from each active prepaid customer whose account balance is equal to or greater than the surcharge; or~~

*b.* ~~The wireless service provider shall divide the total earned prepaid wireless telephone revenue received by the wireless service provider within the calendar month and divide by 50 dollars, and multiply the quotient by the surcharge.~~

~~The surcharge shall be remitted based upon the address associated with the point of purchase, the customer billing address, or the location associated with the mobile telephone number for each active prepaid wireless telephone that has a sufficient positive balance as of the last days of the information, if that information is available. If the wireless service provider receives a partial payment of a monthly bill, the payment shall first be applied to the amount owed the wireless carrier with the remainder being applied to the surcharge. The wireless carrier shall bill and collect for a full month's surcharge in cases of a partial month's service. The wireless carrier is entitled to retain 1 percent of any wireless surcharge collected as a fee for collecting the surcharge as part of the subscriber's periodic billing. The wireless E911 surcharge is not subject to sales or use tax.~~

**10.8(6)** ~~Remaining surcharge~~ Surcharge funds shall be remitted on a calendar-quarter basis ~~within 20 days~~ by the close of business on the twentieth day following the end of the quarter with a remittance form as prescribed by the E911 program manager. Providers shall issue their checks or warrants to the Treasurer, State of Iowa, and remit to the E911 Program Manager, Homeland Security and Emergency Management Division, 7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston, Iowa 50131.

ITEM 10. Amend rule 605—10.9(34A) as follows:

**605—10.9(34A) Wireless E911 emergency communications fund.**

**10.9(1)** Wireless E911 surcharge money, collected and remitted by wireless service providers, shall be placed in a fund within the state treasury under the control of the administrator.

**10.9(2)** Iowa Code section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this subrule. However, moneys in the fund may be combined with other moneys in the state treasury for purposes of investment.

**10.9(3)** Moneys in the fund shall be expended and distributed in the order and manner as follows:

*a.* An amount as appropriated by the general assembly to the homeland security and emergency management division for implementation, support, and maintenance of the functions of the E911 program and to employ the auditor of the state to perform an annual audit of the wireless E911 emergency communications fund.

*b.* ~~The program manager shall allocate 21 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase 1 services as defined in the Federal Communications Commission docket 94-102 and further defined in their letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to reimburse all wireless carriers for the wireless service provider's eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider's eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under this paragraph.~~

*c.* ~~*b.*~~ The program manager shall reimburse local exchange communications service providers on a calendar quarter basis for their expenses for transport costs between the wireless E911 selective router and the public safety answering points related to the delivery of wireless E911 service.

*d.* ~~*c.*~~ The program manager shall reimburse local exchange communications service providers and third-party E911 automatic location information (ALI) database providers on a calendar quarter basis for the costs of maintaining and upgrading the E911 components and functionalities between the input and output points of the wireless E911 selective router. This includes the wireless E911 selective router and the automatic location information (ALI) database.

*e.* ~~The program manager shall apply an amount up to \$500,000 per calendar quarter to any outstanding wireless E911 phase 1 obligations incurred pursuant to this chapter prior to July 1, 2004.~~

*f.* ~~*d.*~~ The program manager shall allocate an amount up to \$159,000 per calendar quarter equally to the joint E911 service boards and the department of public safety that have submitted a written request to the program manager. The written request shall be made with the "Request for Wireless E911 Funds" form contained in the "State of Iowa Wireless E911 Implementation and Operation Plan." The request is due to the program manager on May 15, or the next business day, of each year. A minimum of \$1,000 per calendar quarter shall be allocated for each public safety answering point with the E911 service area of the department of public safety or joint E911 service board that has submitted a written request to the program manager. The written request shall be made with the Request for Wireless E911 Fund form contained in the State of Iowa Wireless E911 Implementation and Operation Plan. The request is due to the program manager on May 15, or the next business day, of each year.

~~Upon retirement of the outstanding obligations referred to in 10.9(3) "*e.*," the~~ The amount allocated under 10.9(3) "~~*f.*~~" "*d.*" shall be ~~25~~ 46 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint E911 service boards shall be \$1,000 per PSAP operated by the respective authority. Additional funds shall be allocated as follows:

(1) Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the E911 service area to the total square miles in the state.

(2) Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls answered at the public safety answering point in the E911 service area to the total of wireless E911 calls originating in the state.

(3) Funds allocated under 10.9(3) "*d.*" shall be deposited in the E911 service fund and shall be used for communications equipment utilized by the public safety answering points for the implementation and maintenance of E911 services.

~~g. e.~~ If moneys remain after all obligations under ~~subrule 10.9(3), paragraphs “a” to “f,”~~ 10.9(3)“a” to “d,” as listed above, have been fully paid, the remainder may be accumulated as a carryover operating surplus. These moneys shall be used to fund future ~~wireless phase 2~~ network improvements and public safety answering point improvements. These moneys may also be used for wireless service ~~provider’s~~ providers’ transport costs related to wireless E911 phase 2 services, if those costs are not otherwise recovered by the wireless service provider’s customer billing or other sources and are approved by the program manager. Any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

**10.9(4)** Payments to ~~wireless service providers and local exchange~~ communications service providers shall be made quarterly, based on original, itemized claims or invoices presented within 20 days of the end of the calendar quarter. Payments to ~~wireless service~~ providers shall be made in accordance with these rules and the State of Iowa Accounting Policies and Procedures.

**10.9(5)** ~~Wireless service providers and local exchange~~ Local communications service providers shall be reimbursed for only those items and services that are defined as eligible in the enhanced wireless 911 service plan and when initiation of service has been ordered and authorized by the E911 program manager.

**10.9(6)** If it is found that an overpayment has been made to an entity, the E911 program manager shall attempt recovery of the debt from the entity by certified letter. Due diligence shall be documented and retained at the state homeland security and emergency management division. If resolution of the debt does not occur and the debt is at least \$50, the state homeland security and emergency management division will then utilize the income offset program through the department of revenue. Until resolution of the debt has occurred, the state homeland security and emergency management division may withhold future payments to the entity.

ITEM 11. Amend rule 605—10.13(34A) as follows:

**605—10.13(34A) Limitations on use of funds.** Surcharge moneys in the E911 service fund may be used to pay recurring and nonrecurring costs including, but not limited to, network equipment, software, database, addressing, initial training, and other start-up, capital, and ongoing expenditures. E911 surcharge moneys shall be used only to pay costs directly attributable to the provision of E911 telephone systems and services and may include costs for ~~portable and vehicle radios, communication towers and associated equipment, and other radios and equipment permanently located inside the public safety answering point~~ directly attributable to the receipt and disposition of the 911 call. ~~Funds allocated under paragraph 10.9(3)“f” shall be used for communication equipment located inside the public safety answering point for the implementation and maintenance of wireless E911 phase 2 service.~~

ITEM 12. Amend paragraph **10.14(1)“d”** as follows:

*d.* Each PSAP shall provide two emergency seven-digit numbers arranged in rollover configuration for use by telephone company operators for transferring a calling party to the PSAP over the wire-line network. Wireless calls must be transferred to PSAPs that are capable of accepting ANI and ALI.

ITEM 13. Amend subrules 10.14(3) and 10.14(4) as follows:

**10.14(3) Service** Communications service providers shall adhere to the following minimum requirements:

*a.* The PSAP and E911 program manager shall be notified of all service interruptions in accordance with ~~the provisions of Iowa Administrative Code 199—paragraph 22.6(3)“e.”~~ 47 CFR Part 4.

*b.* All communications service providers shall submit separate itemized bills to the E911 program manager, the department of public safety, a joint E911 service board or PSAP operating authority, as appropriate.

*c.* The communications service provider shall respond, within a reasonable length of time, to all appropriate requests for information from the administrator, the department of public safety, a joint E911

service board or operating authority and shall expressly comply with the provisions of Iowa Code section 34A.8.

d. Access to the wireless E911 selective router shall be approved by the E911 program manager. Communications service providers must provide the company name, address and point of contact with their request. If the communications service provider utilizes a third-party vendor, the vendor must provide this information listing the vendor's customer's requested information.

**10.14(4)** Voluntary standards. Current technical and operational standards applying to E911 systems and services can be found in the “American Society for Testing and Materials Standard Guide for Planning and Developing 911 Enhanced Telephone Systems” and in publications issued by the National Emergency Number Association. Master street address guides are encouraged to be developed and maintained by using National Emergency Number Association technical standards 02-010 and 02-011. Standards contained in these documents shall be considered as guidance, and adherence thereto shall be voluntary. Notwithstanding the minimum standards published in these rules, it is intended that E911 ~~telephone~~ communications service providers and joint E911 service boards and operating authorities employ the best and most affordable technologies and methods available in providing E911 services to the public.

ITEM 14. Amend rule 605—10.15(34A) as follows:

**605—10.15(34A) Administrative hearings and appeals.**

**10.15(1)** E911 program manager decisions regarding the acceptance or refusal of an E911 service plan, in whole or in part, the implementation of E911 and the imposition of the E911 surcharge within a specific E911 service area may be contested by an affected party.

**10.15(2)** Request for a hearing shall be made in writing to the state homeland security and emergency management division ~~chief of staff~~ administrator within 30 days of the E911 program manager's mailing or serving a decision and shall state the reason(s) for the request and shall be signed by the appropriate authority.

**10.15(3)** The ~~chief of staff~~ administrator shall schedule a hearing within 10 working days of receipt of the request for hearing. The ~~chief of staff~~ administrator shall preside over the hearing, at which time the appellant may present any evidence, documentation, or other information regarding the matter in dispute.

**10.15(4)** The ~~chief of staff~~ administrator shall issue a ruling regarding the matter within 20 working days of the hearing.

**10.15(5)** Any party adversely affected by the ~~chief of staff's~~ administrator's ruling may file a written request for a rehearing within 20 days of issuance of the ruling. A rehearing will be conducted only when additional evidence is available, the evidence is material to the case, and good cause existed for the failure to present the evidence at the initial hearing. The ~~chief of staff~~ administrator will schedule a hearing within 20 days after the receipt of the written request. The ~~chief of staff~~ administrator shall issue a ruling regarding the matter within 20 working days of the hearing.

**10.15(6)** Any party adversely affected by the ~~chief of staff's~~ administrator's ruling may file a written appeal to the administrator of the homeland security and emergency management division. The appeal request shall contain information identifying the appealing party, the ruling being appealed, specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief. The administrator shall issue a ruling regarding the matter within 90 days of the hearing. The administrator's ruling constitutes final agency action for purposes of judicial review.

ITEM 15. Amend rule 605—10.16(34A) as follows:

**605—10.16(34A) Confidentiality.** All financial or operations information provided by a ~~wireless communications~~ service provider to the E911 program manager shall be identified by the provider as confidential trade secrets under Iowa Code section 22.7(3) and shall be kept confidential as provided under Iowa Code section 22.7(3) and Iowa Administrative Code 605—Chapter 5. Such information shall include numbers of accounts, numbers of customers, revenues, expenses, and the amounts

collected from said wireless communications service provider for deposit in the fund. Notwithstanding such requirements, aggregate amounts and information may be included in reports issued by the administrator if the aggregated information does not reveal any information attributable to an individual wireless communications service provider.

ITEM 16. Adopt the following new rule 605—10.17(34A):

**605—10.17(34A) Prepaid wireless E911 surcharge.** Administration of the prepaid wireless E911 surcharge is under the control of the Iowa department of revenue. To administer this function, the department has adopted rules that can be found in 701—paragraph 224.6(2)“b” and rule 701—224.8(34A), Iowa Administrative Code.